

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Comprehensive Review of Universal
Service Fund Management,
Administration, and Oversight

Schools and Libraries Universal Service
Support Mechanism

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WC Docket No. 05-195

CC Docket No. 02-6

**Comments of the West Virginia Department of Education, Office of Technology and
Information Systems**

The West Virginia Department of Education (WVDE) hereby submits these comments in response to the above captioned proceeding. The Office of Technology and Information Systems (OTIS) within the WVDE coordinates and administers instructional and administrative technology for statewide projects and competitive grants, as well as having responsibility to implement any educational technology legislation. The WVDE, Office of Technology and Information Systems, completes E-rate applications for county school districts, approves and certifies county technology plans, attends national Train-the-trainer sessions provided by USAC and provides training for county personnel on E-rate rules and guidelines.

The WVDE is a strong supporter of the E-rate program and West Virginia schools and libraries have received over \$60 million in discounts since the program's inception. Our staff is active in the State E-rate Coordinators' Alliance (SECA)

which represents state E-rate coordinators who directly assist applicants. In addition, the WVDE employs a full-time dedicated E-rate coordinator for training and support of the E-rate program.

We have elected to comment only on those issues we believe are of most importance to West Virginia schools and libraries. In general, we support the more extensive comments filed by SECA and the Council of Chief State School Officers (CCSSO).

The WVDE requests the Commission to scrutinize closely the many positive recommendations made by these two organizations. Their ideas on fundamental reform of the program and application process deserve very serious consideration.

A. Management and Administration of the USF

• Paragraph 12: Administrative Structure

The WVDE does not recommend the replacement of the designated administrator with another type of administrative structure or entity. While problems exist with the current processes, the WVDE believes USAC itself is not the issue. The problem lies in the bureaucracy of the program. Streamlining application for Priority One services and adopting processes that rely on existing state and local competitive bidding laws and regulations rather than redundant federal requirements can reduce the ‘red-tape’ of the application process while still maintaining strict accountability. Changing administrators will only lead to greater delays as transitions between administrators occur and new administrators “get on board” with current procedures and processes.

- **Paragraph 22 Administrative Procedures**

The WVDE agrees with the FCC that there is a fundamental difference between ministerial errors and intentional fraud, and that greater clarity in USAC's rules and procedures will help reduce ministerial errors. The WVDE recommends that the FCC provide greater resources toward the administration of the E-rate program and further that the FCC establish a streamlined process for making prompt policy decisions and providing timely policy advice to the USF administrator.

The current situation concerning the FCC's governance of the USF and the USF Administrator has become so bureaucratic and administratively cumbersome that the lack of timely policy guidance and decisions has become a major problem that routinely prevents applicants from timely receiving funding decisions.

- **Paragraphs 24-29 Performance Measures**

The WVDE believes measures for the E-rate program should be more than just the number of schools or number of classrooms connected. As teachers and schools become more effective in providing quality learning experiences for students, the need for bandwidth and connectivity capacity grows. And the larger the school, the more students and teachers served, the greater the amount of bandwidth required. Alternative measures for the E-rate program could be: (1) the degree to which students, teachers and administrators have on-demand access to advanced communications capability (a single Internet connection in the library or in the

principal's office should not be deemed a satisfactory level of connectivity. Teachers should have access to advanced communications services in their classrooms, administrators should have access to advanced communications services in their offices and most importantly students should have ready access to advanced communications services at appropriate times during each school day); and (2) the speed at which the school is connected (schools should currently be connected at a rate equal to or greater than the Commission's present definition of "advanced communications capability"). The WVDE does not believe there is any easy or reasonable way to distinguish use of E-rate funds from the benefits of other programs that support similar services or facilities and further believes there is no need to document such a distinction; that is outside the statutory goal of the program.

- **Paragraphs 32-33: Program Management**

The WVDE believes oversight of the program through PIA reviews could be better accomplished through State review of applications. This process of State review would be supported by administrative funds from the USF. States have experience with their structures, procurement processes and laws; whereas PIA reviewers have limited knowledge of State structures, procurement processes and laws. State review, because of knowledge and proximity, would be more accountable and provide a more efficient and cost-effective administrative process, saving both time and money.

- **Paragraphs 37-41: Application process**

The WVDE supports the simplifying of the application process and forms. This simplification will minimize common ministerial and processing errors and will improve overall program management. Adopting a shortened and simplified form for applicants seeking only Priority 1 Services can improve and expedite the application and approval process. An easier and shortened application process will enable beneficiaries to focus on managing and monitoring the use of E-rate funds as opposed to diverting attention to satisfying one size fits all requirements that yield minimal benefits. A more timely approval process by the administrator will be of great benefit to schools in both planning and budgeting.

The WVDE also urges the Commission to relax applicants' obligations to comply with existing federal competitive bidding requirements. The WVDE urges the Commission to rely on existing state and local competitive bidding laws/regulations and accountability processes rather than redundant federal requirements. The Commission has not abided by this basic foundation of the E-rate program and has used the Form 470 process to override state and local procurement laws as is observed with the West Virginia Waiver ruled by the FCC. In this ruling, the timeline certifications required in the 470/471 application process did not fit within the State's timeline for State Master Contract review and renewal (See FCC DA 05-2179). Applicants can find themselves wrestling with conflicts between state/local

procurement laws and E-rate regulations. (Does the applicant violate state procurement laws to follow E-rate rules? or Does the applicant follow state procurement laws and risk losing E-rate funds?) The Commission's tightening of the Form 470 process has often put applicants in an untenable situation with regard to competitive bidding. The Commission should return to its initial position that applicable state and local procurement laws govern E-rate applicants.

As previously stated, the current rules requiring competitive bidding are onerous and burdensome to applicants. In many cases, education institutions are not served by multiple telecommunications carriers and small infrastructure projects often do not attract multiple bids. In such circumstances, the competitive bidding requirements do not serve the purpose of ensuring efficient use of program funds. Instead they are time-consuming tasks for applicants and in some cases a stumbling block to receiving much needed funds for telecommunication services. The WVDE urges the Commission to rely on existing state and local competitive bidding laws and regulations regarding procurement of services.

In the matter of technology plan requirements, the E-rate technology planning process timelines do not sync with county school district planning and budgeting cycles. The WVDE proposes that rather than using the technology plan as verification that applicants have budgets to cover their portion of discounted bills and verification that sufficient resources are in place to take advantage of the

requested telecommunications services that the Commission should rely on certifications on the Form 471 for this verification. Existing federal technology planning requirements such as the technology planning requirements of the EETT program should be accepted for this program.

- **Paragraph 43: Service Providers and Consultants**

The WVDE urges the Commission to establish "standards of conduct" for service providers and consultants in order to protect E-rate applicants and beneficiaries from unscrupulous behavior and incompetent advice. Due to the complexity of the E-rate program and the many compliance requirements, applicant's are often overwhelmed and their experience and training does not prepare them to handle the required tasks of the program. They then can fall victim to "predatory" vendors and unqualified consultants. This can lead to waste, fraud and abuse. As described above, simplifying the application process would reduce the technical expertise needed to participate in the program, but the Commission and USAC should also implement standards to help applicants retain competent counsel and to ensure they are treated fairly and honestly by vendors and consultants. For example, consultants should not be allowed to seek payment on a contingency basis, but should only charge for actual time spent. Contingency fees encourage consultants to persuade applicants to inflate funding requests and leads to instances of waste, fraud and abuse.

- **Paragraph 60: USF Disbursements**

The WVDE believes that a better disbursement process for BEARs (Form 472s) could be achieved by sending the money directly to the applicant rather than routing the funds through the service provider. The BEAR form certifies that the applicant has made payment in full to the service provider and the service provider currently signs the BEAR to indicate that all obligations have been met. This should provide enough documentation that the applicant is entitled to the reimbursement. Sending the reimbursement directly to the applicant would reduce paperwork and protect the applicant from service provider error as well as “fraudulent” service providers. There are instances where providers have received BEAR funds and then declared bankruptcy or claimed loss due to embezzlement leaving the applicant without funds and without recourse to recover the funds.

Oversight of the USF

- **Paragraphs 69-75: Audits**

The Commission seeks comments on whether the current structure of E-rate audits is appropriate to the program. While the WVDE agrees that an efficiently designed auditing process is necessary to ensure program integrity and to deter waste, fraud and abuse, we believe that existing State processes can regularly audit program requirements and be a more accountable, efficient and cost-effective process.

Existing State auditing processes from such offices as the Office of Education Performance Audits, the State Purchasing Division and the State Auditor’s Office

can better serve the program with their particular knowledge of state procurement laws and competitive bidding processes. This process of State auditing would be supported by administrative funds from the USF at a much reduced cost while increasing accountability and effectiveness.

Schools and county school districts should not be burdened with costs related to independent audits. The goal of the E-rate program is to bring funding to economically challenged schools and county school districts that cannot afford adequate telecommunications services. Poorer schools and county school districts would not be able to participate in the E-rate program because they could not afford the cost of the audit – thereby penalizing the very entities that the E-rate program was designed to serve.

Conclusion

The West Virginia Department of Education appreciates this opportunity to offer its suggestions to simplify and streamline the E-rate program. We believe that major, fundamental changes are needed in the program.

October 18, 2005